

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7734

Petition of Northern New England Energy Corporation)
("NNEEC"), as agent for 9231-9797 Quebec Inc., Trencap)
L.P., IPL System Inc., Enbridge Inc., Capital d'Amerique)
CDPQ Inc. and Caisse de depot et placement du Quebec, for)
approval of an Indirect Transfer of Control of Vermont Gas)
Systems, Inc. and Green Mountain Power Corporation)

Order entered: 6/10/2011

ORDER RE INDIRECT TRANSFER OF CONTROLLING INTEREST

I. INTRODUCTION

Northern New England Energy Corporation ("NNEEC"), as agent for certain other companies ("Petitioners"), filed a petition with the Public Service Board ("Board") on March 22, 2011, related to the possible acquisition by these companies of significant ownership interests in Noverco, Inc., a Québec corporation ("Noverco"). Noverco, through its indirect 71% ownership interest in Gaz Métro Limited Partnership ("Gaz Métro")¹ and Gaz Métro's ownership of NNEEC, has an indirect controlling interest in Vermont Gas Systems, Inc. ("Vermont Gas") and Green Mountain Power Corporation ("GMP"). The petition seeks Board approval of the direct or indirect acquisitions of controlling interests by the Petitioners pursuant to 30 V.S.A. § 107. The prefiled testimony of Pierre Despars, the Executive Vice President, Corporate Affairs and Chief Financial Officer of Gaz Métro, was filed with the petition.

Noverco is currently owned by three shareholders: Trencap, L.P., a Québec limited partnership ("Trencap") owns a majority (50.38%) of Noverco's voting shares; IPL Systems, Inc.

1. Structured as a limited partnership, Gaz Métro is a major transporter and distributor of natural gas in Quebec and the northeastern portion of North America.
<http://www.corporatif.gazmetro.com/lentreprise/structure-corporative.aspx?currentcontentid=46&culture=en-ca>

("IPL"), an Alberta corporation that is a subsidiary of Enbridge, Inc. ("Enbridge"),² owns 32.06% of such shares; and and Lauerentides Investissements SAS ("Laurentides"),³ owns 17.56% of such shares.

Under a Purchase and Sale Agreement, dated February 1, 2011, Lauerentides will sell its entire 17.56% ownership interest in Noverco directly to either: (i) 9231-9797 Québec Inc. ("Investment Vehicle"), a newly created corporation that will be wholly owned by Trencap and IPL or by Trencap alone; or (ii) Caisse de dépôt et placement de Québec (the "Caisse"),⁴ which indirectly controls and owns a majority interest in Trencap. The final structure of the purchase transaction, including the identity of the purchaser of Noverco shares, will apparently depend on regulatory approvals and other considerations. In any event, while the direct or indirect ownership interests in Noverco of the Caisse, and probably of Trencap and IPL as well, will increase as a result of the sale by Laurentides, no new companies (other than the Investment Vehicle)⁵ will be added to the ownership chain of Vermont Gas and GMP as a result of the sale.

On May 13, 2011, the Department of Public Service ("Department") advised the Board that it had reviewed the petition and the supporting prefiled testimony and recommended the Board grant the petition without the necessity of a hearing. The Department noted that the links between the purchase and sale transaction involving Noverco shares and the interests of Vermont Gas and GMP are very remote. The Department concluded, based on an analysis of the petition and the prefiled testimony, that the interests of Vermont Gas and GMP will not be adversely affected by the transaction and that the reorganization of Noverco's ownership structure will promote the public good.

2. Enbridge is headquartered in Calgary, Alberta, and owns and operates a large natural gas distribution company. <http://www.enbridge.com/AboutEnbridge/CorporateOverview.aspx>

3. Lauerentides, formerly known as Lauerentides Investissements S.A., is an indirect subsidiary of the French multinational energy company, GDF SUEZ S.A. (the successor by merger to Gaz de France).

4. The Caisse is an institutional fund manager that was originally created by the government of Québec to manage and invest the pension and other funds of public employees. Docket 6993, *Petition of Northern New England Gas Corporation as agent for, among others, Caisse de dépôt et placement de Québec, for approval of their indirect acquisition of a controlling interest in Vermont Gas*, Order (8/31/04) at 3.

5. The Investment Vehicle will most likely be merged into Noverco following any purchase by it of Laurentides' shares in Noverco. Despars pf. at 4; Petition at 3.

On June 7, 2011, NNEEC filed its proposal for decision, which is supported by the Department, and a request that the Board issue a decision without further proceedings in this matter.

Section 107 of Title 30 requires that the parties have an opportunity for a hearing prior to any Board decision on whether to approve a proposed acquisition of a controlling interest. None of the parties to this proceeding have requested a hearing, and the Department, in its recommendation that the Board approve the petition, also stated its view that a hearing is not necessary. The Board also concludes that a hearing is not necessary as the filings submitted by the parties provide an adequate basis in the case of this petition for the requested relief.

II. FINDINGS

Based on the petition, the prefiled testimony of Pierre Despars and the accompanying exhibits NNEEC-1, 2, 3.1, 3.2 and 3.3, the Board finds:

1. NNEEC is a Vermont corporation that owns all of the issued and outstanding stock of Vermont Gas and GMP, which are both Vermont corporations engaged in businesses subject to regulation by the Board. In addition, GMP owns more than 10% of the issued and outstanding equity interests in Vermont Yankee Nuclear Power Corporation, Vermont Electric Power Company, Inc., and Vermont Transco LLC (the "GMP Affiliates"), which are also subject to the jurisdiction of the Board. Despars pf. at 1; Petition at 1.
2. Gaz Métro, a Québec limited partnership, owns all of the issued and outstanding stock of NNEEC. Petition at 2.
3. Gaz Métro inc., a Québec corporation ("GMI"), is the sole general partner of Gaz Métro and owns approximately 70.99% of the limited partnership interests of Gaz Métro directly and an additional, approximately 0.01% of those interests indirectly through GMI's 100% ownership of Gaz Métropolitain Plus Inc. Despars pf. at 3.
4. Noverco owns all the issued and outstanding stock of GMI. Despars pf. at 3.
5. Noverco is currently owned directly by Trencap, IPL and Laurentides with Trencap owning 50.38%, IPL owning 32.06%, and Laurentides owning 17.56% of the issued and outstanding shares of common stock of Noverco. Despars pf. at 3-4.
6. IPL is a subsidiary of Enbridge. Despars pf. at 3.

7. Capital d'Amerique CDPQ Inc. ("CDA") is the sole general partner of Trencap and is itself wholly owned by the Caisse.⁶ Despars pf. at 3-4.

8. Under a Purchase and Sale Agreement, dated February 1, 2011 ("Purchase Agreement"), Laurentides will sell its 17.56% equity interest in Noverco to a purchaser that will be an affiliate of one or both of the other current shareholders of Noverco, namely either an affiliate of Trencap alone or an affiliate of both Trencap and IPL. The identity of the actual purchaser and the structure of the purchase will be determined based on regulatory approvals and other considerations. Despars pf. at 2 and 4-5; Petition at 1 and 3-4.

9. In accordance with the Purchase Agreement, Trencap and IPL organized the Investment Vehicle in January of 2011, with Trencap owning a 61.11% interest and IPL owning a 38.89% interest in the Investment Vehicle. Despars pf. at 4; Petition at 3.

10. In the absence of regulatory or other obstacles, the Investment Vehicle will purchase Laurentides' 17.56% equity interest in Noverco and the Investment Vehicle will most likely be merged into Noverco following the sale with the consequence that Trencap's direct ownership interest in Noverco's common shares will increase from 50.38% to 61.11% and IPL's direct ownership interest in Noverco's common shares will increase from 32.06% to 38.89%. A small possibility exists that the merger between the Investment Vehicle and Noverco will not be consummated. If the sale occurs in this manner, but the merger of the Investment Vehicle does not occur, the direct and indirect, through the Investment Vehicle, equity interests of Trencap and IPL in Noverco would be the same as their direct ownership interest would be if the merger occurs. Despars pf. at 4; Petition at 2-3.

6. As detailed in findings to the Board Order in 6993, the Caisse previously increased its direct ownership stake in Noverco to a 50.38% interest in June 2004 through the purchase of 49.62% of Noverco's common shares that were then owned, or subject to a purchase option, by HQ Energie Inc. ("Hydro Québec"). The Caisse then transferred all its shares in Noverco to a limited partnership it organized (presumably, Trencap) so as to provide a vehicle for indirect equity investments in Noverco by other investors of up to approximately one half of the amount of the purchase. Docket 6993, Order (8/31/04) at 3. A press release issued earlier this year by the Caisse announcing the proposed purchase by Trencap and ILP of Laurentides' interest in Noverco indicated that the Caisse, through CDA, would retain between a 58.5% and 65.81% limited partnership interest in Trencap following the purchase of Laurentides' Noverco shares. See <http://www.lacaisse.com/en/nouvelles-medias/Documents/structure.pdf> and <http://www.cnw.ca/en/releases/archive/February2011/03/c7512.html>.

11. If regulatory approval of the purchase of Noverco shares cannot be obtained as a consequence of IPL's equity interest in the Investment Vehicle, IPL will be released from its obligation under the Purchase Agreement and Trencap will become the sole owner of the Investment Vehicle. In this circumstance, Trencap would purchase Laurentides' common shares of Noverco through the Investment Vehicle and, upon the merger of the Investment Vehicle with Noverco, Trencap's direct ownership interest in Noverco's common shares would increase from 50.38% to 67.94% and IPL's direct ownership interest in Noverco's common shares would remain at 32.06%. Despars pf. at 4-5; Petition at 3-4.

12. If the Investment Vehicle is unable to close the purchase for any reason whatsoever (assuming the fulfillment of conditions precedent by certain other parties to the Sale Agreement), all the Investment Vehicle's rights to purchase the common shares of Noverco from Laurentides will be automatically assigned to the Caisse. In this circumstance, following the purchase of the shares by the Caisse, Trencap would still directly own 50.38% of Noverco's common shares, IPL would still directly own 32.06% of such shares, and the Caisse would directly own 17.56%. Coupled with the Caisse's existing indirect ownership of Noverco shares through CDA and Trencap, the Caisse would directly or indirectly control 67.94% of the outstanding common shares of Noverco. Despars pf. at 5; Petition at 3-4.

13. As of December 31, 2010, the Caisse had net assets of CDN \$151.7 billion and CDN \$199.1 billion under management. Despars pf. at 5-6.

14. As of December 31, 2010, Enbridge, the parent corporation of IPL, had total assets of CDN \$30.12 billion. Despars pf. at 6.

15. The proposed acquisitions of controlling interests will not have any effect on the services, operations, regulation, business plans, management, corporate structure or capital structure of Vermont Gas, GMP or the GMP Affiliates and will not have any effect on customer service or service quality. Despars pf. at 6; Petition at 5.

III. DISCUSSION AND CONCLUSIONS

The Vermont statute related to the acquisition of control over any company subject to jurisdiction of the Board is quite broad and extensive in its reach. Section 107(a) of Title 30 states in applicable part:

(a) No company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the public service board, **or in any company which, directly or indirectly has a controlling interest in such a company**, without the approval of the public service board.

30 V.S.A. § 107(a) (emphasis added).

"Controlling interest" is defined for purposes of this statute to mean:

ten percent or more of the outstanding voting securities of a company; or such other interest as the public service board determines, upon notice and opportunity for hearing following its own investigation or a petition filed by the department of public service or other interested party, to constitute the means to direct or cause the direction of the management or policies of a company. The presumption that ten percent or more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule.

30 V.S.A. § 107(e)(1).

Section 107(b) requires "any company seeking to acquire such a controlling interest" to file a petition with the Board "which describes the acquisition and sets forth the reasons why such acquisition should be approved." The Board may grant approval to a proposed acquisition of a controlling interest upon finding the acquisition will promote the public good (after due notice and opportunity for a hearing).⁷

Among the applicable factors considered in determining whether an acquisition of a controlling interest will promote the public good, the Board generally assesses whether the acquirer is technically competent, is financially sound and will act as a fair partner in transactions with citizens of Vermont, and whether the acquisition will create efficiencies for the benefit of customers and whether it will impair or obstruct competition in relevant markets.⁸ As the

7. 30 V.S.A. § 107(b).

8. See Docket 7404, *Petition of Entergy Nuclear Vermont Yankee and Entergy Nuclear Operations for approval of an indirect transfer of control*, Order (6/24/10) at 7-8; Docket 7213, *Joint Petition of Green Mountain Power Corporation, Northern New England Energy Corporation and others for approval of a merger*, Order (3/26/07) at 9-10; Docket 6150, *Joint Petition of Bell Atlantic Corp. and GTE Corp. for approval of Agreement and Plan of*

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acquisition of a controlling interest in a company becomes more indirect and remote in the chain of ownership from a Vermont utility, some of these factors may not be relevant and others will require less scrutiny. This is particularly true when the chain of ownership below the company proposing to acquire a controlling interest and above the Vermont utility includes a substantial business enterprise such as Gaz Métro. In such cases, the financial soundness of the acquirer and its reputation as a fair business partner would still be relevant (albeit with less scrutiny). In addition, any positive or negative effect the acquisition might have relative to the business of the Vermont utility or to Vermont generally, especially in regard to efficiencies and competition, would also be relevant. A cursory description of the principal business of the acquirer and of any overlapping lines of business that could arguably affect competition or increase efficiencies in Vermont will likely suffice in most instances. Sometimes, however, even the acquisition of a controlling interest that is remote in the chain of ownership from a Vermont utility (such as Hydro Québec's earlier acquisition of a controlling interest in Noverco that was ultimately adjudicated in Docket No. 5934) may cause substantial interest and concern and require additional filings and proceedings.

The Petitioners request Board approval with respect to possible aspects of the purchase transaction that may be subject to the Board's jurisdiction under Section 107, namely: (a) the acquisition by the Investment Vehicle of 17.56% of Noverco's common shares; (b) the direct or indirect acquisition by IPL and its parent corporation, Enbridge, of additional Noverco shares, equal to 6.83% of the outstanding common shares of Noverco, which would increase their direct or indirect ownership interest in Noverco from 32.06% at present to 38.89%; (c) the direct or indirect acquisition by Trencap and CDA of additional Noverco common shares that will increase the ownership interest of Trencap and CDA in Noverco by between 10.73% to 17.56% from 50.38% at present to between 61.11% to 67.94%; and (d) the direct or indirect acquisition by the Caisse of additional Noverco common shares, which will result in a direct ownership interest in Noverco's common shares of 17.56% or, through the increase of between 10.73% to

8. (...continued)
Merger, Order (9/13/99) at 48-49; Docket 5900, *Joint Petition of New England Telephone & Telegraph Co. and Bell Atlantic Corp. for approval of a merger*, Order (2/26/97) at 9-10,

17.56% in Trencap's ownership interest in Noverco, in an indirect controlling ownership interest in Noverco of between 61.11% and 67.94%.

The Petitioners do not believe that further Board approval is required under Section 107(a) for the acquisitions by IPL, Enbridge, Trencap or the Caisse, but still seek Board approval whether or not it is required under Section 107(a) in order to avoid the adjudication of jurisdictional issues. In the case of the direct or indirect acquisition by IPL and Enbridge of additional shares in Noverco representing less than ten percent of Noverco's outstanding voting securities, the Board agrees with the Petitioners that further Board approval would not be required unless somehow this particular increase in share ownership from 32.06% to 38.89% triggered additional rights under the organizational documents of Noverco, or under contract, that would enable IPL or Enbridge to direct or cause the direction of the management or policies of Noverco.⁹ The Board, however, disagrees with the Petitioners that further Board approval is not required in the case of the additional direct or indirect acquisition by Trencap, CDA and the Caisse¹⁰ of more than the ten percent outstanding voting securities of Noverco, a company which indirectly has a controlling interest in companies subject to the jurisdiction of the Board.¹¹

9. The acquisition by IPL of 32% of the outstanding voting securities of Noverco was approved by the Board in February of 2004 in connection with its approval of a purchase of Noverco shares by Hydro Québec. Docket 5934, *Petition of Northern New England Gas Corporation as an agent for Hydro-Quebec for such approval as may be required of Hydro-Quebec's acquisition of a controlling interest in entities that own Northern New England Gas Corporation*, Order (2/25/04) at 5.

10. In August of 2004, the Board approved the acquisition of a controlling interest by the Caisse, CDA and a limited partnership (presumably, Trencap under a different name) resulting from their acquisition of a 50.38% direct or indirect ownership interest in Noverco's common shares. Docket 6993, Order (8/31/04) at 3 and 6.

11. Even after the Board has approved the acquisition of ten percent or more of the outstanding voting securities of a company subject to the jurisdiction of the Board or in a company that has a direct or indirect controlling interest in such a company, additional acquisitions of shares in the future that in the aggregate exceed ten percent or more are also presumptively subject to Board approval. As expressly provided for in Section 107(e)(1), the presumption that such an acquisition constitutes an acquisition of a controlling interest may be rebutted by the company acquiring such an interest. This interpretation of Section 107 is consistent not only with the actual language in Section 107, but also with policy behind Section 107. Among other considerations, if the Board's approval of a ten percent investment in a company as a controlling interest were deemed to foreclose the need for any further approvals as the percentage ownership of the acquirer significantly increases over time, the Board would have to apply a level of scrutiny to each such investment that would often be inappropriate given the relative size of the investment and that would likely not serve the interests of the public or the acquiring entity. The Board will clearly require a much more substantial showing to support a finding of public good in the case of the acquisition of 100% of the outstanding voting securities of a company than it would require in the case of a 10% investment (especially, if other investors

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In any event, the Board has no objection to the proposal of the Petitioners that the Board approve all these acquisitions to avoid the need for further adjudication of the relevant issues. Accordingly, all the possible proposed acquisitions will be regarded for purposes of this Order as involving the direct or indirect acquisition of a controlling interest in Noverco (which is a company that has an indirect controlling interest in companies subject to the jurisdiction of the Board) and as the acquisition of an indirect controlling interest in Vermont Gas, GMP and the GMP Affiliates.

As a result of the proposed acquisitions, the ultimate controlling entities in the chain of ownership of Métro Gaz, Vermont Gas and GMP will be the Caisse and Enbridge with GDF SUEZ S.A. (formerly, Gaz de France) no longer having a controlling interest. The controlling interest of the Caisse in Noverco will increase from 50.38% to up to 67.94% and that of Enbridge may increase from 32.06% to 38.89%. As the Department observes, these changes of ownership are remote from the ownership of the Vermont utilities. Furthermore, they constitute no fundamental change in the status quo: prior to the acquisitions, Trencap, CDA and the Caisse already held majority interests in Noverco, and while that majority stake is solidified through the acquisition of an additional "controlling interest" under Section 107, these acquisitions will have no effect on Vermont Gas, GMP or the GMP Affiliates.¹²

The Petitioners propose that the simplification of the ownership structure of Noverco provides the basis to support a finding of public good by the Board under Section 107. This would suggest that if the proposed acquisitions complicated the ownership structure of Noverco, there would be nothing to support a finding of public good, which is not the case. The Board's finding of public good in this instance rests on the principle that it encourages future investment in Vermont utilities to allow direct and indirect investors and potential investors to purchase and sell direct and indirect ownership interests in Vermont utilities. Under circumstances in which an acquisition of a controlling interest would clearly have no adverse effect, it will almost always

11. (...continued)
have larger investment stakes in the company).

12. See finding 15 above.

be possible, if the Department concurs, to resolve a Section 107 petition based on prefiled testimony if it is evidentially sufficient without the necessity of a hearing.

The Board notes the practice of NNEEC, a Vermont corporation, in this and prior proceedings to file petitions with the Board "as agent" for the companies that are actually acquiring the relevant controlling interests. After further consideration of this practice, the Board has concluded that it is inappropriate to continue to accept filings on this basis. Section 107(b) is quite specific that "any company seeking to acquire such a controlling interest shall file a petition" with the Board. Given the Board's implicit acquiescence to this practice of NNEEC in the past, the Board will not require a refile of the petition directly by the appropriate parties in this proceeding. However, NNEEC is advised that any future filings related to acquisitions of controlling must be made directly by the companies acquiring such interest.¹³ Among other reasons, in addition to the statutory mandate, it is important for the Board to know that such acquiring companies have specific knowledge of the Section 107 requirement and of the petition being filed on their behalf and that, through the petition, they acknowledge the jurisdiction of the Board at least in so far as it relates to the acquisition of a direct or indirect controlling interest in a company that is otherwise subject to the jurisdiction of the Board.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. The proposed direct and/or indirect acquisitions by (i) Caisse de dépôt et placement de Québec, (ii) Trencap, L.P., (iii) Capital d'Amerique CDPQ Inc., (iv) Enbridge, (v) IPL Systems, Inc. and (vi) 9231-9797 Québec Inc. of a controlling interest in Noverco, Inc. and of an indirect controlling interest in Vermont Gas Systems, Inc., Green Mountain Power Corporation, Vermont

13. In circumstances where acquisitions of controlling interests are being made by multiple parties, such as the present instance, it may be appropriate for the petition to be signed by a single entity, as agent for the others. However, appropriate documentation from each of the companies that propose to acquire a controlling interest should be included in the petition certifying to the appointment of the agent for this purpose and acknowledging the jurisdiction of the Board at least in so far as it relates to the acquisition of a direct or indirect controlling interest in a company that is otherwise subject to the jurisdiction of the Board. In the case of a corporation or other company that has not been incorporated or organized at the time the petition is filed, the sponsor of this company or the company on whose behalf the newly formed company will be acquiring a controlling interest should be a direct party to the petition, with the newly formed company joining in the petition after its organization or incorporation.

Yankee Nuclear Power Corporation, Vermont Electric Power Company, Inc., and Vermont Transco LLC, as described in the findings above, will promote the public good and are approved.

2. Within thirty days after the completion of the proposed transactions described in the findings, the Petitioners shall notify the Board and the Vermont Department of Public Service as to their completion, shall specify the structure that was used to complete the transactions, and shall state the actual direct and indirect ownership interest of each of the Petitioners in the outstanding common shares of Noverco, Inc. following the completion of the transactions.

3. Future petitions filed with the Board related to direct or indirect acquisitions of controlling interests should not be made by Northern New England Energy Corporation, as agent for the acquiring companies, but such petitions should be directly filed by the acquiring companies or persons.

Dated at Montpelier, Vermont, this 10th day of June, 2011.

<u>s/James Volz</u>)	
)	
)	PUBLIC SERVICE
<u>s/David C. Coen</u>)	
)	BOARD
)	
<u>s/John D. Burke</u>)	OF VERMONT

OFFICE OF THE CLERK

FILED: June 10, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.